

1 Rule 4.3. Dealing with Unrepresented Person.

2 ~~(a) During the course of a lawyer's representation of a client, the lawyer shall not~~
3 ~~give advice to an unrepresented person other than the advice to obtain counsel.~~

4 ~~(b)(a)~~ In dealing on behalf of a client with a person who is not represented by
5 counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the
6 lawyer knows or reasonably should know that the unrepresented person
7 misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts
8 to correct the misunderstanding. The lawyer shall not give legal advice to an
9 unrepresented person, other than the advice to secure counsel, if the lawyer knows or
10 reasonably should know that the interests of such a person are or have a reasonable
11 possibility of being in conflict with the interests of the client.

12 (b) A lawyer may consider a person, whose representation by counsel in a matter
13 does not encompass all aspects of the matter, to be unrepresented for purposes of this
14 Rule and Rule 4.2, unless that person's counsel has provided written notice to the
15 lawyer of those aspects of the matter or the time limitation for which the person is
16 represented. Only as to such aspects and time is the person considered to be
17 represented by counsel.

18 Comment

19 [1] An unrepresented person, particularly one not experienced in dealing with legal
20 matters, might assume that a lawyer is disinterested in loyalties or is a disinterested
21 authority on the law even when the lawyer represents a client. In order to avoid a
22 misunderstanding, a lawyer will typically need to identify the lawyer's client and, where
23 necessary, explain that the client has interests opposed to those of the unrepresented
24 person. For misunderstandings that sometimes arise when a lawyer for an organization
25 deals with an unrepresented constituent, see Rule 1.13(f).

26 [2] This Rule distinguishes between situations involving unrepresented persons
27 whose interests may be adverse to those of the lawyer's client and those in which
28 the person's interests are not in conflict with the client's. In the former situation, the
29 possibility that the lawyer will compromise the unrepresented person's interests is so
30 great that this Rule prohibits the giving of any advice, apart from the advice to obtain
31 counsel. Whether a lawyer is giving impermissible advice may depend on the

32 experience and sophistication of the unrepresented person, as well as the setting in
33 which the behavior and comments occur. This Rule does not prohibit a lawyer from
34 negotiating the terms of a transaction or settling a dispute with an unrepresented
35 person. So long as the lawyer has explained that the lawyer represents an adverse
36 party and is not representing the person, the lawyer may inform the person of the
37 terms on which the lawyer's client will enter into an agreement or settle a matter,
38 prepare documents that require the person's signature and explain the lawyer's own
39 view of the meaning of the document or the lawyer's view of the underlying legal
40 obligations.

41 [3] Paragraph (b) recognizes that the scope of representation of a person by
42 counsel may, under Rule 1.2, be limited by mutual agreement. Because a lawyer for
43 another party cannot know which of Rule 4.2 or 4.3 applies under these
44 circumstances, the lawyer who undertakes a limited representation must assume the
45 responsibility for informing another party's lawyer of the limitations. This ensures
46 that such a limited representation will not improperly or unfairly induce an
47 adversary's lawyer to avoid contacting the person on those aspects of a matter for
48 which the person is not represented by counsel. Note that this responsibility on the
49 lawyer undertaking limited-scope representation also relates to the ability of another
50 party's lawyer to make certain ex parte contacts without violating Rule 4.2.

51 [3a] Utah Rule of Professional Conduct 4.3(b) and related Comment [3] are Utah
52 additions to the ABA Model Rules clarifying that a lawyer may undertake limited
53 representation of a client under the provisions of Rule 1.2.

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